

B. Orlovskyi
Candidate of Law Sciences,
Senior Lecturer at the Department of Administrative and Economic Law,
Odessa I.I. Mechnikov National University

THE USE OF MECHANICAL MEANS AND DEVICES AS A MODERN WAY OF IMPLEMENTATION OF JUSTIFIABLE DEFENCE

One of the circumstances, which exclude criminality of act in the criminal law of Ukraine, is the justifiable defence. In the theory of criminal law, the justifiable defence as a circumstance (legitimate act), which excludes criminality of act, has its juridical structure and is characterized by certain ways of its implementation. One of such ways of implementation of the justifiable defence may be use of mechanical means and devices, which automatically hit abuser. The existence of the specified way of its implementation causes considerable debate in the theory and in the science of criminal law of Ukraine.

According to the first approach, which was formed on the basis of a general analysis of judicial practice, such actions are not considered as the justifiable defence but are classified according to the consequences, as murder or injury through negligence. According to the second approach it is considered that such actions are the justifiable defence.

To support the second point of view the author believes that the use of me-

chanical means and devices that automatically hit abuser can be a way of justifiable defence. This way of defence should be applied with certain restrictions. The legal basis for its application is the existence of a real threat of socially dangerous abuse. The procedure for installing mechanical means and devices is “preparation for the justifiable defence” and there is no regulation of its legitimacy. Also there should be a gradation of mechanical means and devices, depending on the severity of harm: a) those threatening life of an abuser (i.e., those that could cause serious bodily injury or death of a person). Application and use of these mechanical means and devices for the protection of property rights is unacceptable; b) those that are not dangerous to life and health of abuser (may cause mild or moderate injury). Given the different conclusions the author proposes appropriate amendments to the Resolution of the Plenum of the Supreme Court Ukraine of April 26, 2002 “On Judicial Practice in Cases of Justifiable Defence”.